

House Study Bill 686 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
LABOR BILL BY CHAIRPERSON
OLSON)

A BILL FOR

1 An Act requiring certain weekly workers' compensation benefits
2 to be calculated by including an employee's overtime
3 and premium pay, and to include an annual cost-of-living
4 adjustment.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 85.36, Code 2009, is amended to read as
2 follows:

3 **85.36 Basis of computation.**

4 1. The basis of compensation shall be the weekly earnings
5 of the injured employee at the time of the injury. Weekly
6 earnings means gross salary, wages, or earnings of an employee
7 to which such employee would have been entitled had the
8 employee worked the customary hours for the full pay period in
9 which the employee was injured, as regularly required by the
10 employee's employer for the work or employment for which the
11 employee was employed, computed or determined as follows and
12 then rounded to the nearest dollar:

13 ~~1-~~ a. In the case of an employee who is paid on a weekly
14 pay period basis, the weekly gross earnings.

15 ~~2-~~ b. In the case of an employee who is paid on a biweekly
16 pay period basis, one-half of the biweekly gross earnings.

17 ~~3-~~ c. In the case of an employee who is paid on a
18 semimonthly pay period basis, the semimonthly gross earnings
19 multiplied by twenty-four and subsequently divided by
20 fifty-two.

21 ~~4-~~ d. In the case of an employee who is paid on a monthly
22 pay period basis, the monthly gross earnings multiplied by
23 twelve and subsequently divided by fifty-two.

24 ~~5-~~ e. In the case of an employee who is paid on a yearly
25 pay period basis, the weekly earnings shall be the yearly
26 earnings divided by fifty-two.

27 ~~6-~~ f. In the case of an employee who is paid on a daily
28 or hourly basis, or by the output of the employee, the
29 weekly earnings shall be computed by dividing by thirteen the
30 earnings, including overtime, shift differential ~~pay but not~~
31 ~~including overtime or, and~~ premium pay, of the employee earned
32 in the employ of the employer in the last completed period
33 of thirteen consecutive calendar weeks immediately preceding
34 the injury. If the employee was absent from employment for
35 reasons personal to the employee during part of the thirteen

1 calendar weeks preceding the injury, the employee's weekly
2 earnings shall be the amount the employee would have earned had
3 the employee worked when work was available to other employees
4 of the employer in a similar occupation. A week which does
5 not fairly reflect the employee's customary earnings shall be
6 replaced by the closest previous week with earnings that fairly
7 represent the employee's customary earnings.

8 ~~7.~~ g. In the case of an employee who has been in the employ
9 of the employer less than thirteen calendar weeks immediately
10 preceding the injury, the employee's weekly earnings shall
11 be computed under ~~subsection 6~~ paragraph "f", taking the
12 earnings, including overtime, shift differential ~~pay but not~~
13 ~~including overtime or, and~~ premium pay, for such purpose to
14 be the amount the employee would have earned had the employee
15 been so employed by the employer the full thirteen calendar
16 weeks immediately preceding the injury and had worked, when
17 work was available to other employees in a similar occupation.
18 If the earnings of other employees cannot be determined, the
19 employee's weekly earnings shall be the average computed for
20 the number of weeks the employee has been in the employ of the
21 employer.

22 h. In the case of an employee injured in the course of
23 performing as a professional athlete, the basis of compensation
24 for weekly earnings shall be one-fiftieth of total earnings
25 which the employee has earned from all employment for the
26 previous twelve months prior to the injury.

27 ~~8.~~ 2. If at the time of the injury the hourly earnings
28 have not been fixed or cannot be ascertained, the earnings for
29 the purpose of calculating compensation shall be taken to be
30 the usual earnings for similar services where such services are
31 rendered by paid employees.

32 ~~9.~~ 3. If an employee earns either no wages or less than the
33 usual weekly earnings of the regular full-time adult laborer
34 in the line of industry in which the employee is injured in
35 that locality, the weekly earnings shall be one-fiftieth of

1 the total earnings which the employee has earned from all
2 employment during the twelve calendar months immediately
3 preceding the injury.

4 *a.* In computing the compensation to be allowed a volunteer
5 fire fighter, emergency medical care provider, reserve peace
6 officer, volunteer ambulance driver, volunteer emergency rescue
7 technician as defined in section 147A.1, or emergency medical
8 technician trainee, the earnings as a fire fighter, emergency
9 medical care provider, reserve peace officer, volunteer
10 ambulance driver, volunteer emergency rescue technician, or
11 emergency medical technician trainee shall be disregarded and
12 the volunteer fire fighter, emergency medical care provider,
13 reserve peace officer, volunteer ambulance driver, volunteer
14 emergency rescue technician, or emergency medical technician
15 trainee shall be paid an amount equal to the compensation
16 the volunteer fire fighter, emergency medical care provider,
17 reserve peace officer, volunteer ambulance driver, volunteer
18 emergency rescue technician, or emergency medical technician
19 trainee would be paid if injured in the normal course of the
20 volunteer fire fighter's, emergency medical care provider's,
21 reserve peace officer's, volunteer ambulance driver's,
22 volunteer emergency rescue technician's, or emergency medical
23 technician trainee's regular employment or an amount equal to
24 one hundred and forty percent of the statewide average weekly
25 wage, whichever is greater.

26 *b.* If the employee was an apprentice or trainee when
27 injured, and it is established under normal conditions the
28 employee's earnings should be expected to increase during the
29 period of disability, that fact may be considered in computing
30 the employee's weekly earnings.

31 *c.* If the employee was an inmate as defined in section
32 85.59, the inmate's actual earnings shall be disregarded, and
33 the weekly compensation rate shall be as set forth in section
34 85.59.

35 ~~10.~~ 4. If a wage, or method of calculating a wage, is

1 used for the basis of the payment of a workers' compensation
2 insurance premium for a proprietor, partner, limited liability
3 company member, limited liability partner, or officer of a
4 corporation, the wage or the method of calculating the wage
5 is determinative for purposes of computing the proprietor's,
6 partner's, limited liability company member's, limited
7 liability partner's, or officer's weekly workers' compensation
8 benefit rate.

9 ~~11.~~ 5. In computing the compensation to be allowed an
10 elected or appointed official, the official may choose either
11 of the following payment options:

12 *a.* The official shall be paid an amount of compensation
13 based on the official's weekly earnings as an elected or
14 appointed official.

15 *b.* The earnings of the official as an elected or appointed
16 official shall be disregarded and the official shall be paid
17 an amount equal to one hundred forty percent of the statewide
18 average weekly wage.

19 ~~12. In the case of an employee injured in the course of~~
20 ~~performing as a professional athlete, the basis of compensation~~
21 ~~for weekly earnings shall be one-fiftieth of total earnings~~
22 ~~which the employee has earned from all employment for the~~
23 ~~previous twelve months prior to the injury.~~

24 6. The basis of compensation for permanent total disability
25 benefits or death benefits shall adjust on January 1 of
26 each year for compensation which becomes due that year by
27 a percentage equal to the cost-of-living adjustment made
28 to disability benefits payable by the United States social
29 security administration in December of the immediately
30 preceding year.

31 Sec. 2. Section 85.61, subsection 3, Code 2009, is amended
32 to read as follows:

33 3. "*Gross earnings*" means recurring payments by employer to
34 the employee for employment, before any authorized or lawfully
35 required deduction or withholding of funds by the employer,

1 excluding irregular bonuses, retroactive pay, ~~overtime~~, penalty
2 pay, reimbursement of expenses, expense allowances, and the
3 employer's contribution for welfare benefits.

4 EXPLANATION

5 This bill requires certain weekly workers' compensation
6 benefits to be calculated by including an employee's overtime
7 and premium pay, and to include an annual cost-of-living
8 adjustment.

9 The bill amends Code section 85.36 to require the
10 calculation of the amount of weekly workers' compensation
11 benefits to include, not exclude, an employee's earnings for
12 overtime and premium pay. A coordinating amendment is made to
13 Code section 85.61.

14 The bill also amends Code section 85.36 to require the basis
15 of compensation for weekly worker's compensation benefits
16 payable for permanent total disability benefits or death
17 benefits to adjust on January 1 each year for compensation
18 which becomes due that year, by a percentage equal to the
19 cost-of-living adjustment made to disability benefits payable
20 by the United States social security administration in December
21 of the immediately preceding year.

22 Technical corrections are also made to Code section 85.36 to
23 remove an unnumbered paragraph and for purposes of clarity.